

USSN 10/623,241
Response to Office Action dated September 27, 2006
Atty Docket: 100723-14
Page 6

RECEIVED
CENTRAL FAX CENTER
JAN 22 2007

III. REMARKS

Applicant acknowledges with appreciation the interview held December 27, 2006 between Examiners Drs. Srivastava and Weber and applicant's representative, Serle Mosoff.

Claim Status

Claims 1-23 are in the case. Claims 10-11 have been cancelled. Claims 1-9 and 12-14 have been amended. Claims 15-23 are new. Pursuant to the interview of December 27, 2006 and the Interview Summary, the finality of the last rejection is withdrawn and prosecution is reopened.

Claim Rejections - 35 U.S.C. § 103(a)

Claims 1-6, 8-9 and newly presented claims 12-14 stand rejected under 35 U.S.C. § 103 (a) as obvious over the combined teachings of Kaiser (U.S. Patent 5,968,807) in view of Atlas et al. (Handbook of Microbiological Media, CRC Press, Boca Raton, 1997, Pages 209-210 and 1272 for e.g.) and Horn (US 6,908,745).

In the interview, it was pointed out that the instant claims recite a culture medium comprising casein soy peptone agar supplemented with thioglycolate, sodium bisulfite, sodium thiosulphate and bromocresol purple to prepare a culture medium that is capable of being sterilized with gamma rays to detect microorganisms in presence of hydrogen peroxide. The claims further recite a method to detect microorganisms in hydrogen peroxide-bearing air or surface.

USSN 10/623,241
Response to Office Action dated September 27, 2006
Atty Docket: 100723-14
Page 7

Amended claims 1-9 recite the medium before sterilization; new claims 15-23 claim the medium after to sterilization. Basis for new claims 15-23 appears in original claims 1-9 as well as in the specification at, *inter alia*, page 3, lines 13-24.

Applicant apologizes for not citing the basis in the specification for previously submitted claims 12-14. Basis for previously submitted claims 12-14 appears at page 3, line 4, page 8, line 17, 23].

Applicant is claiming a novel composition comprising three different sulfur containing constituents [sodium thiosulfate, sodium thioglycolate and sodium bisulfite in specified quantities] and which has the important characteristic of 1] being stable upon heat sterilization and 2] capable of neutralizing hydrogen peroxide without the addition of other ingredients.

The examiner cites Kaiser (U.S. Patent 5,968,807) in view of Atlas et al. (Handbook of Microbiological Media, CRC Press, Boca Raton, 1997, Pages 209-210 and 1272 for e.g.) and Horn (US 6, 908,745) as rendering applicant's invention obvious.

Applicant traverses this ground for rejection.

Kaiser discloses a glycerol containing culture medium that is stable when heat sterilized. Kaiser's compositions do not disclose a single one of applicants three sulfur containing components, let alone all three.

USSN 10/623,241

Response to Office Action dated September 27, 2006

Atty Docket: 100723-14

Page 8

Horn discloses culture media containing selective antibiotic additives which inhibit the growth of concomitant flora also after gamma sterilization without having a negative influence on the growth of yeasts and fungi. [col. 1, lines 40 et seq.]. Horn's compositions do not disclose a single one of applicant's three sulfur containing components, let alone all three.

As stated by the examiner, Atlas et al. teach a variety of culture media. An examination of the extensive listing, demonstrates that only the Bromothymol Blue Agar contains even a single one of applicant's three components [sodium thiosulfate] and only in the context of use for "the selective isolation and cultivation of members of the Enterobacteriaceae." [page 210]. Thus, Atlas et al. do not teach two of the three sulfur containing components required by applicant's compositions.

The rejection combines the three references to obtain a composition that contains sodium thiosulfate and which may or may not be gamma sterilizable. Applicant recognizes in his specification that there are nutrient media other than the instantly disclosed nutrient media that are gamma sterilization. Applicant is not claiming just any gamma sterilizable medium, nor even any gamma sterilizable sodium thiosulfate containing medium.

Applicant is claiming specific culture media compositions having three sulfur containing components in specified quantities. Combining all three references [even assuming

USSN 10/623,241

Response to Office Action dated September 27, 2006

Atty Docket: 100723-14

Page 9

arguendo that one would do so without the use of hindsight], yields only a culture medium not containing two of the essential components of applicant's medium and not even specifying the amount of the third component.

Thus, the combination of the prior art does not yield applicant's claimed composition. The question of motivation to combine is never reached because the combined disclosures do not disclose or suggest applicant's compositions. A prima facie case has not been made out.

Applicant acknowledges the examiner's reconsideration of this ground for rejection during the course of the interview and receipt of the examiner's Interview Summary wherein the examiner states that "The claimed invention is free of art at this point and the pending claims are allowable over the referenced art."

Claim Rejections - 35 U.S.C. § 112, second paragraph
Claims 1-9 and 12-14 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that applicant regards as the invention.

"gamma-sterilizable"

The rejection argues that the phrase, "gamma-sterilizable" in claims 1-9 renders those claims vague, unclear and indefinite, because said term indicates a futuristic event; and the metes and bounds for said term are not defined in the claim language.

USSN 10/623,241

Response to Office Action dated September 27, 2006

Atty Docket: 100723-14

Page 10

Applicant respectfully disagrees and acknowledges the examiner's reconsideration of this point during the interview where it was stated that this language is permissible. To make the claim scope even clearer, applicant has added new claims 15-23 to claim the composition after sterilization.

For sake of completeness of the record applicant notes the following. First, "sterile" is defined as less than 1 contaminated unit in 10^6 units of a product, where *B. pumilus* is the standard according to ISO norms.

Second, the term "gamma-sterilisable" relates to a normal radiation dose of 16 to 25 kgray, with which 10^6 *Bacillus pumilus* could be killed [specification page 2, lines 29-30]. This level of radiation is well known throughout the industry as being the radiation dose required to render a surface "sterile".

Third, the word "sterilisable" is used to identify a present characteristic or quality of the medium; under the normal rules of English grammar the word is an adjective which modifies the noun "medium", which is clear from the suffix "-able". It is not a verb or an adverb identifying a future action.

"hydrogen peroxide bearing situation"

The rejection states that the phrase "hydrogen peroxide bearing situation" renders claim 1 vague, unclear and indefinite, because the metes and bounds for said phrase are not defined in the claim language. The examiner requests that applicant clearly define all the parameters

USSN 10/623,241
Response to Office Action dated September 27, 2006
Atty Docket: 100723-14
Page 11

**RECEIVED
CENTRAL FAX CENTER**

JAN 22 2007

for the term, "hydrogen peroxide bearing situation".

Applicant does not find the term "hydrogen peroxide bearing situation" in the claims and believes this rejection is moot in light of the previously amended claims. The phrase appeared in original claim 1 but was amended in the response to office action received in the Patent Office Fax Center on June 27, 2006. The amendment to claim 1 appears in the copy of the response retrieved from the Public Pair website.

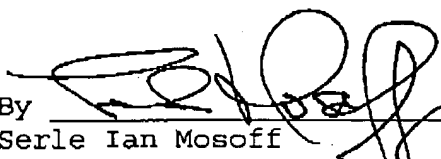
Conclusion

For the aforementioned reasons, applicant believes all the claims are allowable.

The Commissioner is hereby authorized to charge payment for any fees associated with this communication or credit any over payment to Deposit Account No. 14-1263.

Respectfully submitted,

NORRIS McLAUGHLIN & MARCUS, P.A.

By 
Serle Ian Mosoff
Attorney for Applicant(s)
Reg. No. 25,900

875 Third Avenue - 18th Floor
New York, New York 10022
Phone: (212) 808-0700
Fax: (212) 808-0844

Customer No.: 021001